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December 19, 2005

**VIA HAND DELIVERY**

The Honorable Rya W. Zobel  
United States District Court for the  
District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
One Courthouse Way  
Boston, MA 02210

RE: *Dana-Farber Cancer Institute, Inc. v. BOC Group, Inc. v. Taylor-Wharton, et al.*  
Case No. 04-12612 RWZ

Dear Judge Zobel:

We are writing this letter with the agreement and consent of all counsel in this matter to advise you of the status of discovery and recent developments, and to request a brief 30-day extension of some of the dates in the present Joint Pre-Trial Schedule.

My firm, Nixon Peabody LLP, has served as counsel for third-party defendant, Taylor-Wharton Harsco Corporation GasServ (“Taylor-Wharton”) since the commencement of the third-party action. By way of reminder, Taylor-Wharton manufactured the cryogenic freezer that allegedly failed in this action. The other third-party defendant sued in this action is Pacer Digital Systems, Inc. (“Pacer”), which made the electronic control panel that is equipped to the freezer. When this action was initially commenced, Taylor-Wharton and Pacer had separate counsel. In the end of October, however, Taylor-Wharton and Pacer reached an agreement to share counsel. My firm was appointed as counsel for both Taylor-Wharton and Pacer. We promptly met with the representatives of Pacer in early November to get a better understanding of their electronic control panel and their understanding of the facts related to the alleged failure of the freezer in this case.

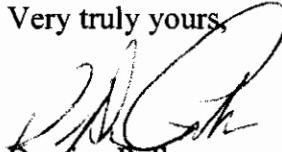
Although we have acted promptly to learn about Pacer’s product, this learning process did require additional time that was not contemplated when the parties agreed to the initial Joint Pre-Trial Schedule. Even so, the parties have proceeded with discovery and have made

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substantial progress. For example, all parties have exchanged initial interrogatories and responses thereto, as well as document demands and responses thereto. Furthermore, the parties have exchanged over one-thousand pages of documents in the course of discovery to date. Depositions of two key BOC witnesses and two key Dana Farber witnesses were conducted in November. At present, depositions of two key Pacer witnesses are set for this Friday, December 16<sup>th</sup> in Indianapolis, IN. Additional Dana Farber witnesses and a BOC witness are scheduled for depositions the week of December 19<sup>th</sup>. Furthermore, depositions of Taylor-Wharton witnesses (to be held in Alabama) and additional Dana Farber witnesses are being scheduled for the first two weeks in January.

Based on the substantial progress in discovery that has been made to date, we believe that the Joint Pre-Trial Schedule need only be amended to extend by 30 days the completion dates for the following categories in the present Schedule: The listed categories from "Status Report on Settlement" (presently January 6<sup>th</sup>) through "26(b), Expert Disclosures, Third-Party Defendants" (presently May 3<sup>rd</sup>). This brief 30-day extension of the foregoing categories should give the parties sufficient time to complete fact depositions and proceed with settlement discussions before having to make significant expenditures for expert discovery. Enclosed is a Proposed Amended Joint Pre-Trial Schedule that reflects the 30-day extension of dates. Please advise whether we will need to file a formal motion to amend the present Pre-Trial Schedule or whether this letter and the Proposed Amended Pre-Trial Schedule are sufficient.

Very truly yours,  
  
 Damien Puller

JJW/kl  
 Enclosure

cc: John J. Weinholtz, Esq.  
 Peter Rossi, Esq.  
 Michael Giunta, Esq.